

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRP.No. 596 of 2006 & CROSS OBJECTION 3/07

CMA.9/2006 of ADDL. DISTRICT COURT-II, KOZHIKODE
OP.4/2004 of SUB COURT, QUILANDY
.....

REVN. PETITIONER: APPELLANT/PETITIONER

K.KUNHIRAMAN, S/O.KUNHIKANARAN,
KANDIYIL HOUSE, P.O.MELUR, MELUR AMSOM DESOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT.

BY ADV. SRI.T.G.RAJENDRAN
SRI.CIBI THOMAS

RESPONDENTS:

1. KERALA STATE FINANCIAL CORPORATION,
REP. BY ITS MANAGING DIRECTOR,
HEAD OFFICE, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 033.
2. THE DISTRICT MANAGER,
KERALA FINANCIAL CORPORATION,
KALLAI ROAD, CALICUT-2.
3. P.M.JAISON, S/O.P.T.MATHEW,
PAIKOTHIL HOUSE, CHENGOTTUKAVE VILLAGE,
MELUR DESOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT.

R3 BY ADV. SRI.P.R.SREEJITH

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON I.A..NOS: 2242/06 & 1311/07

DISMISSED:

14.6.2007

SD/- M.N.KRISHNAN, JUDGE

jj

/TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No.596 OF 2006 A

Dated this the 14th June, 2007.

O R D E R

This revision petition is preferred against the order of the Subordinate Judge, Koyilandy in Indigent O.P.4/04. The petitioner therein had filed the petition to set aside the sale and as he is not having sufficient means to pay the court fee had sought permission to sue as an indigent person. After appearance of the parties the court found that since the prayer is one for setting aside a sale which comes under Art.99 of the Indian Limitation Act and as the time prescribed is one year the suit is barred by limitation and, therefore, rejected the application under Order XXXIII Rule 5(f)CPC. It is against that the present challenge is made. Learned counsel for the revision petitioner wants to highlight that it is Art.59 that will be governing the matter and not Art.99. Art.59 of the Limitation Act deals with the subject of cancellation or setting aside an instrument or decree or for the rescission of a contract. Art.99 very specifically embodies that to set aside a sale by civil or revenue court of a sale for arrears of government revenue or fund in demand recoverable as such arrears. Here the sale which is sought to be challenged squarely comes under Art.99 of the Indian

Limitation Act. When it is so, the period of limitation is one year. The sale was conducted on 21.8.2001 and even according to the petitioner he has come to know of it on 24.9.2001. So even if the date of knowledge is taken he has to file the suit before 23.9.2002. Here the suit is filed only in the year 2004 i.e. on 19.8.2004. So it is squarely beyond the period prescribed under Art.99 of the Limitation Act. When it is so, Order XXXIII Rule 5(f) would be attracted and the court is competent to reject the application where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force. Since the revision petitioner himself had given the date of knowledge as 24.9.2001 the matter is squarely attracted under Order XXXIII Rule 5(f) and therefore it is only to be rejected. This is what is precisely done by the lower court as well. So, I do not find any illegality or irregularity committed by the court below. Therefore C.R.P is dismissed.

M. N. KRISHNAN
Judge